# EXHIBIT D

**GIGANEWS**®

1044 Liberty Park Drive
Austin, Texas 78746
512-684-9740
512-684-9741 Fax

April 7, 2009

Perfect 10, Inc.
P.O. Box 3398
Beverly Hills, CA, 90212
Tel: 800-606-6639
Fax: 310-205-9644
normanz@earthlink. net

Dear Dr. Zada,

Please help us, to help you, by specifically identifying all of the articles that you wish us to address.

We appreciate you bringing this to our attention. Giganews takes Copyright issues very seriously. Each and every article posted to a Usenet server has its own unique Message ID. We cannot locate any article without the Message ID and therefore Giganews will need the full headers and/or Message-IDs to find the specific infringing material and remove it.

We readily comply with take-down notices that comply with the requirements of the Digital Millennium Copyright Act (the "DMCA"), but the Notice is lacking in the requisite information for a DMCA take down notice which would allow us to remain in compliance with our obligations under DMCA.

Giganews, Inc. provides NNTP based Usenet newsgroups to our customers. We are often confused with web based providers of similar services. Unlike these Web based (HTTP) providers, our Usenet (NNTP) Service does not make articles available over the World Wide Web (HTTP); rather articles are available strictly via the NNTP protocol, which requires our customers to utilize a 3$^{rd}$ party application (e.g. Microsoft Outlook Express, Firefox Thunderbird, Forte Agent, etc.) to access our servers and download articles. These articles are contained in over 110,000 discussion groups called "newsgroups". Further differing from other providers, we neither decode Usenet text articles into binary files, nor transmit or store binary files. In fact, no audio or video files exist on our servers in a directly usable form; rather they are stored in their basic ASCII form.

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Giganews is a "service provider," as provided for under the DMCA and supported by many court decisions. Accordingly, ... take our obligations under the DMC... ...y seriously, which include: (i) not modifying the content of material as it is sent, received and stored on our servers at the direction of our customers; (ii) maintaining a system whereby copyright holders can notify Giganews in the event infringing content is located on our servers; and (iii) maintaining a policy of terminating the accounts of subscribers who are repeat infringers.

To assist us in meeting our duties, the "header" of every article posted through our service includes very important information for copyright holders.

Below is a Giganews sample header for your information. For illustrative purposes, we have highlighted in yellow the Message-ID, the X-Trace, and X-DMCA Notifications portions of the header:

```
Path:border1.nntp.dca.giganews.com!border2.nntp.dca.giganews.com!nntp.gigane
ws.com!backlog2.nntp.dca.giganews.com!news.giganews.com.POSTED!not-for-
mail
NNTP-Posting-Date: Thu, 02 Apr 2009 16:04:06 -0500
From: "Giganews Support" <support@giganews.com>
Newsgroups: giganews.test
References: <eeOdndhfE8qazVjUnZ2dnUVZ_t3inZ2d@giganews.com>
In-Reply-To: <eeOdndhfE8qazVjUnZ2dnUVZ_t3inZ2d@giganews.com>
Subject: Re: testing@Earth.Eagle
Date: Thu, 2 Apr 2009 23:03:57 +0200
MIME-Version: 1.0
Content-Type: text/plain;
    format=flowed;
    charset="iso-8859-1";
    reply-type=original
Content-Transfer-Encoding: 8bit
X-Priority: 3
X-MSMail-Priority: Normal
X-Newsreader: Microsoft Windows Mail 6.0.6001.18000
X-MimeOLE: Produced By Microsoft MimeOLE V6.0.6001.18049
Message-ID: <vY6dnXkM-qnbtUjUnZ2dnUVZ8sGWnZ2d@giganews.com>
Lines: 7
X-Usenet-Provider: http://www.giganews.com
X-Trace: sv3-
cv7Peryp91V06YfAPM9qQcdR+d0xJ5eww9eO3lJxNHlaXztAuyv6rrTfi0Ix+g9
A81iq7hBMMxhiLgf!qAsatOp4nRoylgu4iZS0TFW2MSEKsmVWlJhITy4N8tur
Y8gAmZmIxGqVRPMF9KdB7HtQdmhCLg==
X-Complaints-To: abuse@giganews.com
X-DMCA-Notifications: http://www.giganews.com/info/dmca.html
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your
complaint properly
X-Postfilter: 1.3.39
Bytes: 1472
X-Original-Bytes: 1429
Xref: number1.nntp.dca.giganews.com giganews.test:21499
```

First, Giganews includes a "Message-ID" as part of the header. All Usenet articles on Giganews' NNTP servers are indexed in the database by the article's Message-ID. The Message-ID is as essential to locating an article on a Newsgroup system.

Second, Giganews includes an X-Trace to identify an infringing Giganews customer. Our "X-Trace" is a 256 bit encryption of our customer's unique ID number along with other pieces of information about the posting.

Third, Giganews includes our DMCA contact information via the "X-DMCA-Notifications" entry which instructs copyright holders how to contact Giganews in the event infringing content is discovered.

We have the equivalent of the entire Library of Congress uploaded to our servers every two days; tens of millions of articles are posted to our Usenet servers on a daily basis. Just as the Social Security Office needs your unique Social Security Number, instead of your name, to find your record among the millions of others, Giganews similarly needs the unique Message-IDs to find the specific infringing material among the not millions, but billions, of articles stored across our Usenet servers

 We ask that copyright holders include in their DMCA notice **either** the full header **or** the Message-ID of the infringing article (we can derive one from the other).  This is important as an article can be posted in any newsgroup regardless of the name on the newsgroup.

Using the Message-ID, we are able to find and delete even those articles cross-posted to newsgroups whose group name is unrelated to the infringing content.  We strip the Message-ID from the header, locate and delete the article, while, just as importantly,  use the header information to identify if the article was posted by one of our customers.  This allows us to identify if a Giganews subscriber posted the infringing material and query our database to determine if the person is a repeat infringer, which we are under a legal duty to do

Giganews' policy upon receiving a DMCA Notice is to delete the article first and then notify the customer.  Giganews established this policy at the inception of the DMCA in 1998. Giganews' DMCA policies also define a repeat infringer as a person who has had two separate occurrences of posting an article(s) for which separate DMCA Notices have been received. We call this our "Two Strikes and You're Out" policy. On the second "Strike" we  block our subscribers from uploading further infringing material  . This very strict cancellation policy has resulted in weeding our infringers from posting on Giganews.  The X-Trace provides the only information that allows us to identify our customer. The X-Trace customer information is only contained in the header and failure to supply the Message-ID further means Giganews cannot identify repeat infringers who are our customers.  So if the Copyright Holder, or Agent, neglects to supply the Message-ID or the header with X-Trace customer information, Giganews cannot identify and therefore cannot fulfill its legal duty under the DMCA for maintaining a system of cancelling

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repeat offenders. Please, help Giganews, to help you, by supplying Message-IDs or full headers so we can maintain our Repeat offender database.

To help facilitate our DMCA notice process, we have created an <u>automated</u> system to deal with DMCA take down notices. This is because we process a mind boggling amount of data representing <u>tens of millions</u> of unique articles, across an excess of 110,000 separate newsgroups; all processed through our Usenet servers on a <u>daily</u> basis. This translates into more than 3.3 billion articles in our system today. In fact, Giganews, Inc. does not become aware of infringing content until we receive a DMCA notice from a copyright holder (the person who knows better than anyone else that it is in fact a copyrighted work and where it can be found). When received electronically, Giganews can then use automated methods to carry out the steps outlined in the preceding paragraph.

**Please, help us, to help you**, protect you or your members' copyrights, by always sending <u>electronically</u> the articles' headers and Message-IDs.

We think it is helpful to provide copyright holders an example of how a copyright holder can better understand the NNTP protocol. Several years ago, Sony Music was having difficulty understanding the NNTP protocol. A Usenet Newsgroup Service Provider is technically very different from a HTTP web based Internet Service Provider. We suggested to Sony Music's lawyers that rather than using expensive lawyers, it would be faster and cheaper to use one of the electronic Internet search services that function as Copyright Agents for the Copyright Holder. We then used as an example, not a recommendation, the company Bay TSP. (another such company is Media Sentry)  This company, and companies like it, is skilled in massively searching (spidering) Usenet for their clients' copyrighted works, identifying, formatting and sending electronic DMCA Notices attaching the header information or Message-IDs for each article they want Noticed and deleted. This private electronic DMCA Notice method is surgical and results in much faster deletion of infringing articles for both sides and is more efficient than lawyers, paperwork and Courts.

Sony Music hired Bay TSP. This solved the communication issues and Bay TSP sent us multiple Electronic DMCA Notices over the years with the proper header information and we thus were able to promptly delete all their clients' requested articles by Message-ID number. Again, this may be a solution that allows you to help us, help you.

Although we realize the DMCA does not require the use of a 3<sup>rd</sup> Party Copyright Agent, we thought it would be helpful to forward along the contact information for BayTSP and Media Sentry:

BayTSP
PO Box 1314
Los Gatos, CA 95031-1314
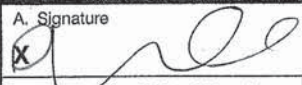Tel: 877.9BAYTSP (877.922.9877)

Media Sentry
4690 Millennium Drive
Belcamp, MD 21017
Tel: 410-931-7500
Fax: 410-931-7524

At this time we consider the action required of us under the framework of the DMCA for this
Notice to be completed.  If there is any further action you believe we should take, or if you have
more information for us, please let us know so we can fulfill our obligations under the DMCA.


Regards,

Ron Yokubaitis
DMCA Agent
Giganews, Inc

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**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Norm Zada, Ph.D.
Perfect 10
72 Beverly Park
Beverly Hills, CA, 90210-1542

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X _____   ☐ Agent   ☐ Addressee

B. Received by (Printed Name)   C. Date of Delivery
C. Dowding   4/11-07

D. Is delivery address different from item 1?   ☐ Yes
   If YES, enter delivery address below:   ☐ No

RECEIVED APR 1 5 2009

3. Service Type
   ☑ Certified Mail   ☐ Express Mail
   ☐ Registered   ☑ Return Receipt for Merchandise
   ☐ Insured Mail   ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)   ☐ Yes

2. Article Number
(Transfer from service    7005 3110 0000 0885 6600

PS Form 3811, February 2004    Domestic Return Receipt    102595-02-M-1540

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**U.S. Postal Service™**
**CERTIFIED MAIL™ RECEIPT**
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| Return Receipt Fee (Endorsement Required) | |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | $ |

Postmark Here

Sent To   Norm Zada Ph D  - Perfect 10
Street, Apt. No.; or PO Box No.   72 Beverly Park
City, State, ZIP+4   Beverly Hills, CA  90210 -1542

PS Form 3800, June 2002    See Reverse for Instructions

7005 3110 0000 0885 6600

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